

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS FERKLER and	:	CIVIL ACTION
EILEEN FERKLER, H/W	:	
	:	
Plaintiffs,	:	NO. 02-CV-4720
	:	
vs.	:	
	:	JUDGE MARY A McLAUGHLIN
STATE FARM FIRE AND CASUALTY	:	
COMPANY,	:	
	:	
Defendant.	:	

DEFENDANT STATE FARM FIRE & CASUALTY COMPANY'S
MOTION OF DISMISS COUNT II (BAD FAITH) OF PLAINTIFFS' COMPLAINT

Defendant State Farm Fire & Casualty Company (hereinafter "State Farm"), by and through its attorneys, Forry, Ullman, Ullman & Forry, P.C., hereby files the following Motion to Dismiss Count II (Bad Faith) of Thomas Ferkler's and Eileen Ferkler's ("Plaintiffs") Complaint:

1. A Complaint in the above-captioned civil action was filed in the Court of Common Pleas of Philadelphia County, Pennsylvania and removed to this Court on July 17, 2002. A true and correct copy of the Complaint is attached as Exhibit A.

2. The Complaint avers that State Farm issued Plaintiffs a Homeowner's insurance policy and that State Farm subsequently denied coverage for a property damage claim submitted by Plaintiffs. See Complaint at paragraphs 3, 5 and 7.

3. The Complaint contains a claim for breach of contract (Count I) and a claim for bad faith under 42 Pa.C.S.A. Section 8371 (Count II).

4. Count II of the Complaint contains two conclusory averments that State Farm engaged in bad faith conduct. See Complaint at paragraphs 12 and 13.

5. The Complaint fails to set forth any facts to support, let alone prove by clear and convincing evidence, that State Farm acted in bad faith in handling Plaintiffs' claim.

6. Accordingly, Count II of the Complaint should be dismissed for failing to state a valid cause of action under Pennsylvania law.

WHEREFORE, Defendant State Fire & Casualty Company respectfully requests that this Motion to Dismiss be granted and that Count II (Bad Faith) of Plaintiffs' Complaint be dismissed with prejudice.

Respectfully submitted,

FORRY, ULLMAN, ULLMAN & FORRY, P.C.

Dated: 7/23/02

By: _____
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